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3 *E-FILED on 7/22/08*
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

10 UNITED STATES OF AMERICA,
11 Plaintiff/Respondent,
12 v.
13 FREDERICK L. SHIRLEY,
14 Defendants/Movant.

Case Nos. C-04-03340-RMW
C-06-06276-RMW
(Related to CR-99-20092-RMW)

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17 ORDER GRANTING CERTIFICATE OF
APPEALABILITY

18 On May 23, 2008, this court issued a decision denying the §2255 motions filed by Frederick
19 Shirley and Cliffina Johnson in these consolidated cases. Movant has filed a timely Notice of
20 Appeal and a request for a Certificate of Appealability (COA). Movant is required to obtain a COA
21 by the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), in order to appeal the
22 denial of his §2255 motion.

23 Under AEDPA, the movant must make a “substantial showing of the denial of constitutional
24 right.” The certificate must issue as to each issue that meets this threshold inquiry. Slack v.
25 McDaniel, 529 U.S. 473, 483 (2000). To do so, the movant “must demonstrate that the issues are
26 debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or
27 that the questions are adequate to deserve encouragement to proceed further.” Barefoot v. Estelle,
28 463 U.S. 880, 893 n. 4 (1983); see also Lambright v. Stewart, 220 F.3d 1022, 1025 (9th Cir. 2000).

In light of the findings of this court, both the claims to be asserted by movant on appeal are subject to debate among jurists of reason. Therefore, a COA shall issue as to (1) whether the undisclosed impeachment information about Clarence Walker's alleged criminal activities and falsehoods was material; and (2) whether the earlier knowledge of Clarence Walker of his own criminal conduct was attributed to the government for purposes of the Brady and Napue claims.

6 || DATED: 7/18/08

Ronald M. Whyte

RONALD M. WHYTE
United States District Judge